



WRIGHT STATE  
RESEARCH INSTITUTE

## GENERAL TERMS AND CONDITIONS OF PURCHASE

### UPDATED March 8, 2018

This is a Purchase Order between Wright State Applied Research Corporation, hereafter referred to as "Buyer," and Seller identified on the face of this Purchase Order, hereafter referred to as "Seller." This purchase order is referred to as "Order."

1. **ACCEPTANCE:** Acceptance of this Order by Seller may be made by signing the acknowledgment copy hereof or by partial performance hereunder, and any such acceptance shall constitute an unqualified agreement to all terms and conditions set forth herein unless otherwise modified in writing by the parties. Any additions, deletions or differences in the terms proposed by Seller are objected to and hereby rejected, unless Buyer agrees otherwise in writing. No additional or different terms and conditions proposed by the Seller in accepting this Order shall be binding upon Buyer unless accepted in writing by Buyer and no other addition, alteration or modification to, and no waiver of any of the provisions herein contained shall be valid unless made in writing and executed by Buyer and Seller. Seller shall perform in accordance with the Description/Quantity schedule set forth in this Order and all attachments thereto.
2. **ORDER NUMBERS:** Buyer will communicate a purchase order number (the "Purchase Order Number") to Seller by telephone, fax or e-mail. Seller shall include the Purchase Order Number on every packing sheet, invoice and every other communication related to this order
3. **PACKING AND SHIPPING:** All items must be properly prepared for shipment to secure lowest transportation rates and comply with carrier regulations. No charges will be paid by Buyer for packing, crating, or cartage unless so stated in the order. A separate packing sheet for each order included in a shipment, showing Purchase Order Number, must be included with each shipment.
4. **SHIPMENT OR DELIVERY:** Time is of the essence for shipment or delivery and to any other performance required of Seller. Shipment or delivery shall be in accordance with the schedule set out in the purchase order and in exact quantities ordered. Whenever the Seller has knowledge that any actual or potential issue, event, or circumstance is delaying or threatens to delay the timely performance of this Order, the Seller shall immediately give written notice thereof, including all relevant information with respect thereto, to the Buyer. Buyer reserves the right, at Seller's expense, to return any goods shipped in advance of the schedule set out in the purchase order.
5. **INSPECTION:** All items are subject to final inspection and acceptance by Buyer at the destination notwithstanding any prior payment or inspection at the source. Acceptance of any items by Buyer shall not be deemed to alter the obligations of Seller or the rights of Buyer and its customers under the Warranty clause or any other provision of this purchase order.
6. **REJECTION:** Buyer shall notify Seller if any items delivered hereunder are rejected for being nonconforming. Buyer may require prompt correction, repair, replacement or re-performance thereof at Buyer's option and Seller's sole expense.

7. **WARRANTY:** Seller warrants that all goods delivered hereunder shall be merchantable, fit for their particular purpose and free from defects, whether latent or apparent. Seller warrants that all services performed hereunder shall be performed in a good and workmanlike manner by qualified, trained personnel, free from errors. All representations and warranties of Seller shall run to Buyer and Buyer's customers. Remedies under this warranty shall include, without limitation, at Buyer's option and at Seller's sole expense, prompt repair, replacement, re-performance, or reimbursement of the purchase price. The foregoing warranties shall survive any delivery, inspection, acceptance or payment by Buyer.
8. **CHANGES:** Buyer may, by written notice to Seller, make changes to any services to be performed or to any goods to be specifically manufactured, but no change shall be effective, nor shall Buyer be obligated to pay any increase in compensation as a result of a change, unless Buyer issues a written change order. Changes which increase or decrease pricing shall be revised as mutually agreed to in writing.
9. **INVOICES/PAYMENT:** A separate invoice shall be issued for each shipment. Invoices shall contain the following information: order number, item number, description of articles, sizes, quantities, unit prices and extended totals. Invoices submitted hereunder will be paid Net 30 Days after receipt of proper invoice or acceptance of delivered items by the Buyer, whichever occurs later. No invoice shall be issued prior to shipment of goods, and no payment shall be made prior to receipt and acceptance of conforming goods and invoice. Payment terms commence upon receipt of a correct invoice..
10. **INDEMNITY:** (a) Seller shall indemnify, defend and hold Buyer and Buyer's customers harmless from and against any and all damages, losses, liabilities and expenses (including reasonable attorneys' fees) arising out of or relating to any claims, causes of action, lawsuits or other proceedings, regardless of legal theory, that result, in whole or in part, from Seller's (or any of Seller's subcontractors, suppliers, employees, agents or representatives): (i) negligence, gross negligence, intentional misconduct, or fraud, (ii) breach of any representation, warranty or covenant made herein; (iii) breach of the confidentiality or disclosure provisions herein; (iv) violation of any law or regulation; or (v) alleged infringement of any patent, copyright or trademark or violation of any other intellectual property right of a third party. This indemnity shall apply without regard to whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability, or other tort. This indemnity shall survive delivery and acceptance of goods or services. Notwithstanding the foregoing, Seller's obligations under this Article shall not apply to the extent that a claim is finally determined by a court of competent jurisdiction to be caused by the negligence or willful misconduct of Buyer.
11. **PATENTS AND TRADEMARKS:** Seller warrants that all goods and services supplied under this purchase order shall not infringe on any third party's patent, copyright, trade secret, trade name, trademark or service mark, or other proprietary right.
12. **TITLE AND RISK OF LOSS:** Seller warrants title to all goods sold and bears the risk of loss or damages to the items purchased under this purchase order until they are delivered in conformity with this purchase order at Buyer's delivery point specified in this purchase order or installed, as required pursuant to the purchase order, and, upon such delivery or installation, title shall pass to Buyer. Passing of title shall not constitute acceptance of the items by Buyer.

13. CONFIDENTIALITY: Seller shall keep confidential all information designated as confidential by Buyer or reasonably known to be confidential, including, but not limited to, designs, processes, drawings, specifications, reports, data and other technical or proprietary information and the features of all parts, equipment, tools, gauges, patterns and other items furnished or disclosed to the Seller by Buyer in connection with this purchase order ("Buyer's Confidential Information"). Seller shall not disclose such information to any third party without the written consent of Buyer and shall not use Buyer's Confidential Information except as contemplated in this purchase order. Upon completion or termination of this purchase order, Seller shall return all Buyer's Confidential Information to Buyer or make such other disposition thereof as may be directed and approved by Buyer and shall certify to such return or destruction.

14. COMPLIANCE: Seller warrants that all goods and services supplied under this purchase order shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances at the time of delivery or performance. **Seller and any subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), 60-741.5(a) and 29 CFR Part 471, Appendix A to Subpart A. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.**

15. TERMINATION: Buyer may, terminate all or any portion of this purchase order at any time by giving written notice to Seller. In the event of termination without cause, Buyer's liability shall be the lesser of: (a) a reasonable price for raw materials, components, work in progress, and any finished units on hand; or (b) the contract price per finished unit, after giving effect to any discount Buyer would otherwise be entitled to. In the event of termination without cause of any separate services specifically ordered, liability shall be the lesser of:

- (a) a reasonable price for properly performed services rendered prior to termination; or
- (b) the contract price for the services. If any hourly or other time-based rate for services is specified in this purchase order, such rate shall be used in determining a reasonable price.

THE FOREGOING STATES BUYER'S ENTIRE LIABILITY FOR TERMINATION. Additionally, Buyer may, by notice to Seller, terminate in whole or in part this purchase order in the event of suspension of Seller's business, insolvency of Seller, institution of bankruptcy, reorganization, or liquidation proceedings by or against Seller, the appointment of a trustee or receiver for Seller's property or business, any assignments by Seller for the benefit of creditors or a breach that is not cured after notice detailing such breach. The rights and remedies of Buyer provided in this Termination clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this purchase order.

16. SUBCONTRACTING AND ASSIGNMENT: Seller shall not assign this purchase order or any rights hereunder, nor delegate any duties, nor subcontract any work, without first securing the written approval of Buyer. The price quoted by Seller includes the price of any goods or services obtained from any subcontractor or supplier to Seller, unless otherwise agreed in advance by Buyer.

17. WAIVER: No waiver of any default by either party shall act as a waiver of a subsequent or different default.

18. **THIRD PARTY BENEFICIARIES:** Seller acknowledges that Buyer's ultimate parent and its subsidiaries are third party beneficiaries ("Affiliates") of these terms and conditions. Affiliates shall have the right to exercise all of the rights of Buyer under these terms and conditions. References in the purchase order to Buyer shall be deemed to include Affiliates as the context requires.
19. **MISCELLANEOUS:** Section headings are for convenience only and shall have no legal or interpretive effect. This purchase order shall be governed by and construed under the laws of the State of Ohio, without regard to its conflicts or choice of law provisions. In the event any dispute arises under this purchase order that exceeds \$100,000 that cannot be resolved by informal negotiation, the parties agree to participate in mediation as a condition precedent to pursuing litigation. The mediation shall be conducted by a licensed, qualified mediator in Dayton, Ohio. Nothing herein shall be construed as creating an exclusive relationship between Buyer and Seller regarding the goods or services. Buyer reserves the right to engage other persons or entities to provide goods and services similar to those provided hereunder. Buyer shall have the right to audit the books and records of Seller relevant to this purchase order, at Seller's place of business or by electronic delivery, until four (4) years after delivery of goods and/or performance of services. Any notices required hereunder shall be given in writing to the addresses set out in the purchase order and shall be deemed effective on the same day any such written notice is personally served, or on the third (3rd) day after such notice is deposited in the United States mail or with a nationally recognized overnight delivery service.